

REPORT ON THE DEATH OF

Anthony Dwayne Lee



JUSTICE SYSTEM INTEGRITY DIVISION

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SUMMARY

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has concluded its investigation of the fatal shooting of Anthony Dwayne Lee by Los Angeles Police Officer Tarriel Hopper. Mr. Lee was fatally shot by Officer Hopper at a Halloween party on October 27, 2000 at a residence known as "The Castle" in the Benedict Canyon section of Los Angeles. The shooting occurred when Mr. Lee pointed what appeared to be a real semi-automatic handgun at Officer Hopper. Officer Hopper fired nine rounds from his handgun at Mr. Lee, striking him four times. Mr. Lee died at the scene. The weapon possessed and used by Mr. Lee was in fact a replica of a .357 Magnum semi-automatic handgun that had possibly been used as a movie or television prop.¹

On Friday, October 27, 2000, a Halloween costume party was held at 9701 Yoakum Drive in the Benedict Canyon section of Los Angeles. By most accounts the party drew over 200 guests. A shuttle was provided to afford guests access to the remote residence. In response to two separate complaints of loud noises and partygoers congregating in the street outside the residence, the Los Angeles Police Department (L.A.P.D.) dispatched Officer Hopper and his partner, Officer Natalie Humpherys, to the scene. They arrived shortly after midnight.

When they arrived, they enlisted the assistance of a security guard in an attempt to locate the hosts of the party. As they walked through the house, no one seemed to know, or cared to divulge, who was in charge of the party or where they could be located. The two officers made their way through the home, ultimately exiting at the rear onto a narrow walkway bordered by what appeared to be a "lap pool."

Officer Hopper noticed a lone male, Eric Schuberg, standing in front of a set of glass doors peering intently into a bedroom. Officer Hopper approached Mr. Schuberg and looked through the panes of the glass door into what he described as a very dimly lit room. Officer Hopper saw three men standing in the room; Anthony Lee, Jeffrey Denton and William Frey. Mr. Lee had his back to Officer Hopper, and was facing Mr. Denton. Officer Hopper turned on his flashlight and shined it into the room. He observed what he thought to be a narcotics transaction in progress. Both Mr. Lee's and Mr. Denton's arms were outstretched toward each other. Mr. Denton quickly pulled his arms back, raised his hands and stepped backward. Mr. Lee, however, turned toward Officer Hopper, reached into his waistband with his right hand and removed what appeared to be a semi-automatic handgun.² As Mr. Lee pointed this realistic looking handgun at him, Officer Hopper removed his handgun and fired nine rounds at Mr. Lee.

¹ The replica weapon, which bore a serial number, was traced to a prop company that furnished such items to the entertainment industry. Mr. Lee was an actor.

² This was not the first time that Mr. Lee had displayed the replica handgun while at the party. According to Mr. Frey and Mr. Denton, Mr. Lee had "pulled the gun" on Mr. Frey and "joked" with him earlier in the evening. Mr. Lee pulled the replica gun in response to Mr. Frey's inquiry as to why he would bring a gun to a Halloween party. Mr. Frey said that the gun looked real to him.

Four of the nine rounds fired by Officer Hopper struck Mr. Lee. Mr. Lee was struck in the back of the head, the upper left back, the right mid-back, and the right upper back. The two wounds to the right back were determined by the coroner to be fatal wounds. Samples of Mr. Lee's blood, urine and stomach contents were tested. Alcohol, benzoylecgonine and cocaine were all detected in significant amounts in Mr. Lee's stomach contents and post mortem blood.³ All of these substances were absent from Mr. Lee's urine indicating that he had consumed the alcohol and cocaine within a relatively short time before his death.

Coroner's investigators at the scene of Mr. Lee's death found fragments of a small green pill in his left palm. This green pill was subsequently analyzed and determined to be methylenedioxy-methamphetamine, a controlled substance commonly known as "Ecstasy."

In attempting to understand how the rounds fired by Officer Hopper impacted Mr. Lee from behind, we have reviewed a re-enactment of the shooting conducted by Biodynamics Engineering of Pacific Palisades, California. As part of their study, Officer Hopper took part in a series of live fire exercises where he was directed to fire his handgun in response to a stimulus. Officer Hopper was able to draw his gun and fire nine rounds as quickly as 1.826 seconds and as slowly as 2.293 seconds. Five of Officer Hopper's rounds fired at Mr. Lee missed, striking a wall behind him. This, coupled with the trajectory of the rounds that struck Mr. Lee suggests that he was turning to his left as Officer Hopper began firing. The first rounds missed Mr. Lee, but the latter four rounds struck him in the back. This all occurred within a matter of a couple of seconds.

We have also consulted with William Lewinski, Ph.D. Dr. Lewinski is an authority in the field of officer-involved shootings. He is a professor in the Law Enforcement Studies Department of Minnesota State University at Mankato. Dr. Lewinski has conducted several comprehensive studies involving the dynamics of suspect movement in officer-involved shootings. According to Dr. Lewinski, once an officer recognizes that his life is in immediate danger, he goes into a life preservation mode. He makes the decision to fire his weapon and there is little that will stop that process (such as the suspect turning away from the officer). In this mode, the officer's entire focus is on drawing, aiming and firing his weapon. The officer is likely to perceive nothing other than the sights of his weapon and the acquisition of a target.

Given the rapidly evolving manner in which this entire incident occurred, coupled with the immediate danger that he perceived, we are convinced that Officer Hopper was justifiably in fear for his life at the time he shot Anthony Dwayne Lee. His use of deadly force in response to Mr. Lee's actions, which probably took approximately two seconds, was both justified and lawful.

³ Benzoylecgonine is a metabolite created by the process of the body's conversion of cocaine.

FACTUAL ANALYSIS

This analysis is based upon our review of the following materials: (1) an investigative file prepared by the L.A.P.D. which includes, among other things, L.A.P.D. Robbery Homicide Division investigation reports, preliminary investigation reports, property reports, death investigation reports, firearms and analyzed evidence reports, diagrams of the interior and exterior of the residence at 9701 Yoakum Drive, and summaries of witness statements taken during the investigation; (2) three hundred and ten photographs, taken by the L.A.P.D., of the location of the shooting, Mr. Lee's body at the scene, the replica firearm brandished by Mr. Lee, and evidence recovered during the investigation including Mr. Lee's clothing and bullets taken from the room in which the shooting took place; (3) the report of, and photographs taken during, the autopsy of Mr. Lee, including the reports of the Coroner's investigator; (4) audio tapes of the interviews of witnesses Eric Schuberg, Jeffrey Denton, William Frey and James Partee; (5) a video tape of a televised interview of witness Schuberg with Fox 11 news; (6) audio tapes and printed reports of L.A.P.D. communications pertaining to this response and subsequent shooting; and (7) a report entitled Preliminary Biodynamic Analysis of Fatal Shooting Injuries Sustained by Anthony Lee, including video tapes of an animated shooting reconstruction and "live fire" testing, prepared by Biodynamics Engineering, Inc.⁴

In accordance with this office's agreement with the L.A.P.D., Deputy District Attorneys James Cosper, Kraig St. Pierre and Marcia Daniel and District Attorney Senior Investigator Rogelio Maldonado responded to the location of the shooting under the District Attorney's Response Team (D.A.R.T.) program. They were present during and conducted interviews of witnesses and examined the shooting scene.

Public complaints and the L.A.P.D. response

On Friday, October 27, 2000 at approximately 9:56 p.m., the L.A.P.D.'s West Los Angeles Station received a call reporting a "loud party" taking place at 9701 Yoakum Drive in the Benedict Canyon area of Los Angeles. At 10:04 p.m., L.A.P.D.'s Communications Division assigned a patrol unit to investigate the complaint. At approximately 11:18 p.m., an L.A.P.D. operator attempted to contact the original caller to determine if the police were still needed but received no answer. At 11:38 p.m., the call was reassigned to another unit. At 11:50 p.m., the call was canceled because the West Los Angeles Station was experiencing a high level of activity.

⁴ This office also received and reviewed the following documents in this matter: (1) an August 28, 2001 "Interdepartmental Correspondence" from Chief Bernard Parks to the Board of Police Commissioners regarding his findings and recommendations in this matter; (2) an October 3, 2001 "Interdepartmental Correspondence" from Inspector General Jeffrey Eglash to the Board of Police Commissioners concerning his findings and recommendations; and (3) an October 17, 2001 "note" from Inspector General Jeffrey Eglash to the Board of Police Commissioners responding to questions they had posed in an earlier proceeding.

At 11:53 p.m., the West Los Angeles Station received a second call requesting that the police respond to a large party at the same address on Yoakum Drive.⁵ The caller informed the operator that a large number of partygoers were gathered in and around the residence. She also stated that illicit narcotics activity may be taking place both inside and outside that party.

At 11:54 p.m., the Communications Division assigned West Los Angeles Patrol Officers Tarriel Hopper and Natalie Humpherys to investigate the complaint. The communication, received by the officers via their Mobile Data Terminal (MDT), indicated that the incident involved a "loud party" with "loud music" and "guests outside of the location."⁶ At 12:27 a.m., Officer Humpherys contacted the Communications Division and informed them that she and her partner were enroute to the Yoakum Drive address.⁷

The statement of Officer Tarriel Hopper⁸

Officer Hopper stated that he and his partner, Officer Humpherys, were on patrol on October 27, 2000 at 11:54 p.m. when they received a call assignment through their MDT requesting their response to a "loud party/disturbance" at 9701 Yoakum Drive. As they proceeded east on Yoakum Drive, Officer Hopper and his partner noticed several groups of people, attired in costumes, walking westbound toward Benedict Canyon. When they neared 9701 Yoakum Drive, they observed a large crowd of individuals near the house and driveway. Officer Hopper heard loud talking and other noise coming from the location.

According to Officer Hopper, he parked their patrol vehicle in front of 9720 Yoakum Drive. Officer Hopper then observed Officer Humpherys utilize the MDT to notify the Communications Division that they were at the scene. He also heard her broadcast that same message over her ASTRO radio.⁹ Officer Hopper realized that no response was received from the radio broadcast, but was unsure if the MDT transmission was acknowledged.

When they got out of their patrol car, both officers approached the house at 9701 Yoakum Drive. Officer Hopper noticed that a large crowd was assembled in front of the residence. He approached the group and asked if anyone knew the whereabouts of the

⁵ The two complaint calls were made by different individuals.

⁶ The communication sent to the officers did not make any mention of possible narcotics activity at the location.

⁷ This was the last communication relating to this incident received by the Communications Division until after the shooting of Mr. Lee.

⁸ Officer Hopper was interviewed by Detective Forsman of the L.A.P.D.'s Robbery-Homicide Division on October 28, 2000 at 7:40 a.m. He provided this statement after an L.A.P.D. administrative order compelling him to do so.

⁹ The Communications Division did not receive either of these transmissions. On November 3, 2000, members of the Communications Division conducted a radio coverage check of the area. They determined that there was limited to no coverage on all West Los Angeles Station radio channels from the 9700 block of Yoakum Drive and within a one and one-half mile radius.

home owners and/or hosts of the party.¹⁰ None of the people could provide any information regarding the identity of the hosts or knew where they could be located.

Officer Hopper and his partner then walked up the driveway of the residence. As they did so, they continually asked people that they encountered about the location of the party hosts. Again, no one was able to provide any information. The officers continued through the driveway and entered the residence through an east facing door.¹¹

After entering the house, Officer Hopper questioned people he contacted as to the whereabouts of the party hosts. He walked through the house and entered a room, later designated the "south tile room," that was filled with partygoers. Officer Hopper asked those assembled if any of them knew where the host of the party could be found. Again, no one claimed any knowledge of the party hosts. Officer Hopper stated that he then walked down "some steps" and entered another room, later named the "north tile room," and then west into a smaller room where a "bar" had been set up. Throughout this walk, he continued to ask people he encountered about the hosts of the party. Everyone that he asked indicated that they had no idea who or where the hosts were.

Officer Hopper said that, at about that time, he heard "some ruffling and some noise, directly behind us." The two officers exited the room through an exterior door to the north. Once through the door, they found themselves in an extremely narrow east/west walkway.¹² As he glanced west, Officer Hopper saw a male Caucasian, later identified as witness Eric Schuberg, staring "intently" into the house through the panes of a glass door. Officer Hopper approached Mr. Schuberg who stepped back slightly as he did so.

When he peered through the window, Officer Hopper found himself looking into a "very dimly lit" room. With the light available to him, he saw three individuals standing in the room. Two of the people were male Caucasians, later identified as Jeffrey Denton and William Frey. Mr. Frey was facing west toward an interior wall with the third man (Mr. Lee) standing in front of him. Mr. Denton was facing north, toward the door through which Officer Hopper was looking, with the third man (Mr. Lee) in front of him, facing him and slightly offset to his left.¹³ Mr. Denton appeared to be wearing an "afro style" wig and multicolor clothing. Officer Hopper did not describe Mr. Frey's appearance.

¹⁰ The party was hosted by the residents of the home: Anthony Alfaro, Anthony Anselmi, Greg Dathe, Jeffrey Denton and Richard Hull. Mr. Hull was outside the house when the police arrived and was unaware that they had entered the location until after the shooting took place. Mr. Dathe was on a second floor patio and indicated that he was unaware that the police were in the house until after the shooting. This office has received no statements from Mr. Alfaro and Mr. Anselmi. Therefore, their whereabouts at the time of the shooting are unknown.

¹¹ See Addendum #1 for a "floor plan" diagram of the residence at 9701 Yoakum Drive.

¹² This walkway, bordered to the south by the house and to the north by a "rock" lap pool, varies in width from two feet to two and one-half feet. See Addendum #2 for photographs of the walkway.

¹³ See Addendum #3 for a diagram of the northwest bedroom, including the positions of the parties immediately prior to the shooting.

Officer Hopper described the third man, later identified as the decedent Anthony Lee, as relatively large in stature, six foot to six foot three inches in height and weighing between two hundred and two hundred and fifty pounds,¹⁴ with a dark complexion and a mustache and small beard. Mr. Lee was facing away from Officer Hopper "at a slight angle." Mr. Lee was dressed in a black hooded sweatshirt, loose fitting khaki trousers, black boots, and had a black printed bandanna wrapped around his left hand. On his head Mr. Lee wore what was later determined to be red devil mask. The mask was pushed away from his face and was resting atop his head.

At that point, Officer Hopper removed his mini-flashlight from his equipment belt. Holding it in his left hand with his elbow bent upward, Officer Hopper turned on the flashlight. What he saw led Officer Hopper to suspect that a narcotics transaction was taking place between Mr. Denton and Mr. Lee. The two men were facing each other with their hands outstretched toward one another. As soon as Mr. Denton looked in the direction of the flashlight, he pulled his hands away, raised them in the air and stepped backward. While Mr. Denton kept his hands in that position, Officer Hopper noted that his right hand remained clenched in a fist while his left hand was open.

The following account of the events that occurred was taken from Officer Hopper's own words during his interview:

"The male Black (Lee) turns and looks toward the glass door where I'm positioned ... He looks directly at me and we make eye contact. Almost simultaneously, upon making eye contact, he reached for his waistband ... with his right hand ... and removed a blue steel semi-automatic handgun ... at which point, fearing for my life, I drew my weapon¹⁵ from my holster and, after he removed the gun he pointed the weapon, his gun, right at me and fearful for my safety and my life I fired my weapon, my service weapon ... During this entire time, it happened very, very quickly, his gun was continually pointing at me ... I fired my weapon, continually assessing the situation, and it was very, very rapid and I fired ... and he never dropped the weapon ... he never made an attempt to drop the weapon or anything. The weapon stayed pointed toward me ... while firing, I'm moving backwards toward a position of cover and, as this is happening, I recognize that my weapon is out of battery."¹⁶

Officer Hopper ejected the empty magazine from his gun, removed another loaded magazine from his equipment belt and reloaded his weapon. During this time, he observed Mr. Lee laying motionless on the floor of the bedroom. The gun that he had pointed at Officer Hopper was laying on the floor near Mr. Lee's knee. Officer Hopper also saw that Mr. Frey and Mr. Denton had moved from their initial positions, away from him and

¹⁴ Mr. Lee was, in fact, six foot three inches tall and weighed two hundred and forty-nine pounds.

¹⁵ Officer Hopper was armed with a Smith & Wesson .45 caliber semi-automatic handgun fully loaded with eight rounds in the magazine and one in the chamber.

¹⁶ The phrase "out of battery" means that Officer Hopper's gun was out of bullets.

further into the room. As Mr. Denton walked away, Officer Hopper ordered him to stop and raise his hands. Mr. Denton complied with that order. Officer Hopper instructed Mr. Denton to step around Mr. Lee and remain in the room. Officer Hopper scanned the rest of the room but could not locate Mr. Frey.

Using the microphone of his ASTRO radio, attached to the lapel of his uniform, Officer Hopper attempted to place a "help call" to the Communications Division. He received no response. Officer Hopper then retrieved his cellular telephone from the pocket of his uniform and attempted to place a call to the West Los Angeles Station. However, he was unable to establish a cellular connection and the attempt failed.¹⁷

Officer Hopper attempted to enter the bedroom by grasping the handle of the glass door; however, the door was locked. He and Officer Humpherys then entered the residence through the same door they had previously used to exit onto the walkway. When he entered, Officer Hopper uncocked his gun and assumed a "low-ready" shooting position. As he entered the interior hallway, Officer Hopper saw Mr. Frey near the door to the bedroom and ordered him to stand aside. Mr. Frey complied. Officer Hopper then cautiously entered the bedroom and, with the use of his flashlight, examined the motionless Mr. Lee. After he determined that Mr. Lee was incapacitated, Officer Hopper noted that the gun Mr. Lee had been holding was a "replica" firearm. Officer Hopper chose not to handcuff Mr. Lee at that point because he no longer appeared to be a threat.

A second attempt to contact the Communications Division by radio was unsuccessful. Officer Hopper again checked his cellular phone and found that he still did not have a signal. He then began asking people who had entered the room where he could find the nearest telephone. No one responded. Officer Hopper was able to locate a facsimile machine in the bedroom that had a telephone handset. He used the handset to call the West Los Angeles Station. Once in contact with the Station, he told the Watch Commander that he had been involved in a shooting and that he needed additional police units and paramedics immediately. While he was talking to the Watch Commander, Officer Hopper could hear Officer Humpherys talking with the Communications Division from a nearby room.¹⁸

After the notifications were made, Officer Hopper and Officer Humpherys began to secure the area around the scene of the shooting. According to Officer Hopper, this became difficult due to the sheer number of persons who had gathered in and around the bedroom. Eventually, Officer Humpherys was successful in directing the majority of those assembled into another room. Officer Hopper then used his left hand to check Mr. Lee's neck for a pulse; he found no discernible pulse. He then assumed a guarding position near the door until the paramedics and additional police units arrived moments later. Once

¹⁷ See note 6, ante.

¹⁸ The Communications Division received notification of this shooting from Officer Humpherys at 12:44 a.m.

additional units arrived, Officer Hopper left the house and provided a statement to the first sergeant to arrive at the scene. He was then transported to the West Los Angeles Station where he was interviewed by members of the Robbery-Homicide Division.

The statement of Officer Natalie Humpherys¹⁹

Officer Humpherys stated that she and Officer Hopper were on patrol when they received a call assignment through their MDT requesting their response to 9701 Yoakum Drive. The message described the disturbance as a "loud party" with "loud music" and "guests outside of the location." At approximately 12:27 a.m., she notified the Communications Division via their MDT that they were responding to the scene. As Officer Hopper drove up Yoakum Drive, Officer Humpherys noticed several groups of costumed people walking westbound toward Benedict Canyon. As they arrived at 9701 Yoakum Drive, she saw a large crowd near the house. Officer Humpherys pressed the "At Scene" button on their MDT terminal, but received no response to the transmission. She then attempted to notify the Communications Division by her ASTRO radio, again receiving no response.²⁰

Officer Hopper parked their vehicle in front of 9720 Yoakum Drive and they both got out and approached the house at 9701 Yoakum Drive. As they neared the driveway where several vehicles were parked, Officer Humpherys contacted an individual who was wearing a jacket that had the word "Security" printed across the back. Officer Humpherys asked the man if he knew where the hosts of the party were. According to Officer Humpherys, he responded that the person responsible for the party was "somewhere in the house and that he would go and look for him."²¹

They followed the "security guard" up the driveway and into the residence. Officer Humpherys indicated that there were still a large number of people in the residence and "it was pretty loud." As the officers walked down the hallway, Officer Humpherys passed the kitchen where she observed several partygoers congregated. At that point, Officer Humpherys lost sight of the "security guard."

As they continued down the hallway, they came upon the "south tile room" where she observed several partygoers. Officer Humpherys heard Officer Hopper ask the people if they knew where he could locate the host of the party. She remembered most of the people responding "no," but believed she heard at least one of them say, "He is somewhere around here." She followed her partner into the "north tile room."²² Again, she heard Officer Hopper ask those present for the hosts of the party. Everyone that he asked indicated that they had no idea who or where the hosts were. They then walked west into

¹⁹ Officer Humpherys was interviewed by Detective Forsman of the L.A.P.D.'s Robbery-Homicide Division on October 28, 2000 at 9:00 a.m. She provided this statement after an L.A.P.D. administrative order compelling her to do so.

²⁰ See note 6, ante.

²¹ This "security guard" was subsequently identified as Tremayne Webster. Officer Hopper did not recall this contact with Mr. Webster.

²² Officer Humpherys explained that, throughout this incident, Officer Hopper was the "Contact Officer" and she was the "Cover Officer."

a smaller room where a "bar" had been set up. Officer Humpherys heard her partner ask a woman behind the bar if she knew the location of the hosts of the party. The woman responded in the negative. Officer Humpherys also observed a door in the north wall that allowed access to an outside walkway.

Officer Humpherys followed Officer Hopper out through that door and found herself in a narrow walkway bordered by a concrete "lap pool." When she glanced to the west she saw Mr. Schuberg standing in the walkway just west of her. She described Mr. Schuberg as a Caucasian male, wearing an "afro wig," and dressed in a green "70's sort of shirt." Officer Hopper walked down the walkway and approached Mr. Schuberg. Officer Humpherys heard Officer Hopper ask Mr. Schuberg if he knew the whereabouts of the host of the party. Mr. Schuberg told Officer Hopper that he did not know.²³

While Officer Hopper was speaking with Mr. Schuberg, Officer Humpherys was scanning the area around them. She observed several people moving about on a second floor outdoor patio and she began to monitor their movement. Officer Humpherys then saw her partner looking into the house through what she thought was a glass window.

Within moments, Officer Humpherys saw Officer Hopper draw his gun and "fire several rounds in rapid succession" into the residence through the window. She believed that she heard at least five gun shots, possibly more. Officer Humpherys then drew her own gun in fear of an imminent armed confrontation. She had been facing west to her partner's rear, but quickly moved backward, placed her back against the rear wall of the house for cover and continued to monitor the area including the second level patio. When Officer Hopper stopped firing, she stopped to "access the situation" and then observed him holster his gun.²⁴ Officer Humpherys then holstered her weapon.

Officer Humpherys realized that their radio equipment did not work in the area. She asked Officer Hopper if he had his cellular phone. Officer Hopper removed his phone from his pocket but then told her that the phone was not working. They entered the house through the same door that they had exited and immediately began asking the people who were present for the location of the nearest telephone. An unidentified person directed her to a nearby bedroom, later designated the "south middle bedroom," where she found a telephone. Officer Humpherys called the Communications Division and told them that she and her partner had been involved in a shooting and they were requesting an ambulance and back-up units. While she was on the phone, Officer Humpherys saw Officer Hopper enter the northwest bedroom where the shooting had occurred.

After making her notifications, Officer Humpherys attempted to gather and identify any witnesses to the shooting. She directed witnesses into the "south middle bedroom." While she was involved in that process, the paramedics and additional police officers arrived at the scene. Shortly after their arrival, one of the paramedics approached and asked her to mark a bullet they had found near Mr. Lee's body. Previous to that request,

²³ Neither Officer Hopper nor Mr. Schuberg remember engaging in this conversation.

²⁴ Officer Hopper did not recall holstering his weapon at that point in the confrontation.

Officer Humpherys had not entered the room where the shooting took place. When she entered the room, she observed Mr. Lee laying motionless on the floor. Laying near his legs was "what appeared to be a black semi-automatic handgun." Soon afterward, Officer Humpherys was transported to the West Los Angeles Station.

The statement of Eric Schuberg²⁵

Mr. Schuberg attended the party with his wife and another couple. As they were leaving the house for another party, he and his friend, Steven Sandwisch, decided to use the bathroom. They exited the house and walked to the glass doors of the northwest bedroom. As he looked inside, Mr. Schuberg saw Jeffrey Denton and two other males in the room. He recognized Mr. Lee, who he had met earlier in the evening, as one of the two other men; he did not know the name of the third man (William Frey). Mr. Sandwisch knocked on the glass and was admitted into the room after asking Mr. Denton for the use of his bathroom. Mr. Schuberg decided to remain outside and wait for his friend to return.

After Mr. Sandwisch entered the bathroom, Mr. Schuberg remained at the window looking into the room. He then saw two police officers, one male (Hopper) and one female (Humpherys), approaching him from his left side. Officer Hopper approached the glass door, shined his flashlight into the room and illuminated the three individuals. Almost immediately, Mr. Lee turned and pulled out what appeared to be a gun.²⁶ Mr. Lee pointed the gun in the direction of, and walked toward, the glass doors. Mr. Schuberg was unsure whether Mr. Lee held the gun with one or two hands. Mr. Schuberg stated that the object in Mr. Lee's hands looked like a real gun. He believed it to be a real gun and felt threatened by it and the way that Mr. Lee was holding it as he came at the glass doors. According to Mr. Schuberg, the gun was pointed at Officer Hopper at a chest to head high level from a distance of between five and seven feet. Officer Hopper was standing about two feet away from Mr. Schuberg at the time.

Suddenly, shots rang out and Mr. Schuberg ducked down and away from Officer Hopper. After the shooting stopped, Mr. Schuberg saw the officers backing away from the glass doors. When he looked into the bedroom, he saw Mr. Denton laying across the bed and Mr. Lee "sprawled" out on the floor. Mr. Sandwisch and Mr. Frey were not in the room. Mr. Schuberg turned, looked at the officers and placed his hands up in the air.²⁷ He was escorted to another bedroom where he waited until he was taken to the station to be interviewed.

²⁵ Mr. Schuberg was interviewed by Detective Paul Coulter at the L.A.P.D.'s West Los Angeles Station on October 28, 2000. Deputy District Attorneys Cospier and St. Pierre participated in the interview.

²⁶ Mr. Schuberg stated that he could see the gun as Mr. Lee brought it away from his body. However, he did not see the exact place from where Mr. Lee retrieved the gun.

²⁷ According to Mr. Schuberg, Officer Humpherys was standing approximately ten feet behind her partner. He was unsure whether or not she had her gun drawn at that time.

Mr. Schuberg said that he met Mr. Lee for the first time about an hour before the shooting. He did not see the replica gun on Mr. Lee's person at that time. Mr. Schuberg indicated that he could see everything that was going on in the bedroom once the officer shined his flashlight through the glass doors.²⁸ He reiterated on several occasions that he felt that the gun in Mr. Lee's hand was real. On each occasion, he followed that statement by explaining that he felt personally threatened by the way Mr. Lee was holding the gun and approaching the glass doors. Shortly after the shooting, Mr. Schuberg appeared on the nightly newscast of television Station Fox 11. His statements on the air did not differ from those he gave to the investigators. He again repeated that he believed the gun was real and he felt threatened and in danger from it.

The statement of Jeffrey Denton²⁹

Mr. Denton was a resident of 9701 Yoakum Drive. It was his bedroom in which the shooting took place. The party that night was a joint effort between he and his roommates: Tony Alfaro, Anthony Anselmi, Richard Hull and Greg Dathe.

During the interview, Mr. Denton referred to Mr. Lee as his friend. He had been walking around with and talking to Mr. Lee for about thirty minutes before entering his bedroom. He said that he had first seen the gun that Mr. Lee was carrying earlier in the evening while he and Mr. Lee were talking with Mr. Frey. They had been on an upper patio for about fifteen to twenty minutes when Mr. Lee "pulled the gun out on him." Mr. Lee then "joked" with Mr. Frey with the gun before returning it to his waistband. According to Mr. Denton, that was the last time he saw the gun that night.

Mr. Denton stated that he, Mr. Lee and Mr. Frey walked down to his bedroom to use the bathroom. They entered the room from the rear yard area through the glass doors. He, Mr. Lee and Mr. Frey were standing in the room while another friend, Mr. Sandwisch, was using the restroom.³⁰ All of the lights in the bedroom were off and the only source of illumination came from the bathroom area. After a short time, he saw a flashlight shining through the panes of the glass doors. It was difficult to see outside the doors so he said, "Hey, who's there." According to Mr. Denton, at that precise moment, he turned his back to the glass doors to see Mr. Sandwisch exiting the bathroom.³¹ Mr. Denton said that he did not see Mr. Lee pull the gun from his waistband. He said that he heard "some kind of noise" but, "it did not sound like gunshots."³² Mr. Denton approximated the time between the flashlight shining into the room and the "noises" to have been about five to ten seconds.

²⁸ Mr. Schuberg stated that, at the time of the shooting, he had consumed "five or six beers" over a three hour period. He admitted that he was feeling the effects of the alcohol.

²⁹ Mr. Denton was interviewed by Detective Coulter at the L.A.P.D.'s West Los Angeles Station on October 28, 2000. Deputy District Attorneys Cosper and St. Pierre participated in the interview.

³⁰ Mr. Denton was not questioned about any possible narcotics activity taking place in the bedroom.

³¹ This statement is in direct conflict with that of Mr. Sandwisch who told investigators that he did not leave the bathroom for fifteen to thirty seconds after the last shot was fired.

³² Mr. Denton would have been standing approximately eight to nine feet from Officer Hopper at the time the shots were fired.

When he turned back, Mr. Denton noticed that the panes of the doors were shattered and Mr. Lee was laying on the floor at the foot of his bed on his right side with his eyes open. He (Denton) looked at Mr. Sandwisch and asked, "Is this a joke? This is a joke right." Mr. Denton then looked at his bed and saw blood. He could also smell gun smoke. Mr. Denton turned to look for Mr. Sandwisch but found that he had left the room. Mr. Frey was also gone. Mr. Denton said that he did not see Mr. Lee's gun near his body. Unknown people then "shuffled him out of his room" and he was not allowed to return until after the investigation was completed.³³

The statement of William Frey³⁴

Mr. Frey stated that he arrived at the house, with Mr. Denton, at 7:30 p.m. The party started between 8:00 p.m. and 8:30 p.m. Mr. Frey was acquainted with Mr. Lee through the restaurant at which Mr. Frey worked. Mr. Frey said that earlier in evening, before the shooting, he had questioned Mr. Lee about why he would bring a gun to a party. Mr. Frey indicated that the gun looked real to him. Mr. Lee told him that the gun was not real.

Mr. Frey stated that he, Mr. Lee and Mr. Denton were in Mr. Denton's bedroom when the shooting occurred. The party was over and they were getting ready to "take the shuttle to another party." According to Mr. Frey, he was standing near the glass doors. Mr. Lee was standing to his left facing the doors and Mr. Denton was standing behind Mr. Lee. Mr. Frey stated that he and Mr. Lee were shaking hands when a flashlight shined through the doors.³⁵ When the light came through the door, Mr. Frey saw Mr. Lee pull the gun from his waistband. Mr. Lee began to raise the gun and the shooting started. According to Mr. Frey, Mr. Lee never fully raised the gun or pointed it at the source of the light. Mr. Frey could not see the source of the light through the doors.

After the shooting ended, Mr. Frey realized that he had been cut on his ear and face by flying glass. He ran out of the room but returned a moment later to see Mr. Lee and Mr. Denton on the floor. Mr. Denton was saying that "It was just a joke." Mr. Frey then realized that the shooting was not a joke and left the room. He was later treated and released by the paramedics. Prior to the shooting, Mr. Frey was unaware that police officers were at the residence.³⁶

³³ Mr. Denton stated that he had consumed approximately four mixed drinks within sixty minutes of the shooting and that he had a "buzz" from the alcohol. He also said that he observed Mr. Lee have three or four shots of tequila and two or three beer "chasers."

³⁴ Mr. Frey was interviewed by Detective Dennis Kilcoyne at 9701 Yoakum Drive on October 28, 2000. Deputy District Attorney Daniel participated in the interview.

³⁵ Mr. Frey was not questioned about any possible narcotics activity taking place in the bedroom.

³⁶ Mr. Frey said that he had been drinking beer from the beer kegs during the evening, but that he was not intoxicated at the time of the shooting.

The statement of Steven Sandwisch³⁷

Mr. Sandwisch attended the party that evening with his wife, Mr. Schuberg and his wife. They were in the "library" when "someone came around" telling everyone that the party was over and it was time to leave for the next party. He and Mr. Schuberg needed to use the bathroom, so they walked around the back of the house to Mr. Denton's bedroom. He knocked on the door and was admitted by Mr. Denton. Mr. Schuberg remained outside.

In the bedroom at the time were Mr. Denton, Mr. Frey and Mr. Lee. Mr. Sandwisch had never met Mr. Lee and saw him for the first time when he (Sandwisch) entered the room. He walked past the three men and into the bathroom, closing the door behind him. Mr. Sandwisch said that he could hear low voices in the bedroom. As he turned on the water to wash his hands, the voices raised and were immediately followed by four or five shots, some "thuds" and the sound of glass breaking. Not knowing what had occurred, he remained in the bathroom for "fifteen to thirty seconds." When he emerged, he saw Mr. Denton laying half on and half off the bed. Mr. Lee was laying on the floor at the foot of the bed. Mr. Lee's eyes were open, but he appeared "unconscious or dead." Mr. Denton was repeatedly saying, "What's going on?" and "Is this a joke?" Mr. Frey was no longer in the room.

Mr. Sandwisch left the room through the interior door that lead to the hallway. He said that he did not see Mr. Lee's gun while he was inside the bedroom. He did not know that police officers were at the party, but believed he heard someone say that they had arrived while he was on his way to the bathroom.

The statements of James Partee³⁸

Mr. Partee was employed to provide security at the party. He was dressed in a shirt and jacket, both imprinted with the word "SECURITY." He said that his duties were to monitor the parking, the flow of vehicles and the prevention of loitering outside the house. In his interview on the morning following the shooting, Mr. Partee told the investigators that he was the only guard working at the party. He said that he was "down the street" at the time of the shooting and was unaware that it had occurred until he was told about it by a woman who was leaving the party. Mr. Partee stated that he may have heard one of the gunshots. He said that he did not know the police were at the party.

In his deposition for the civil litigation involving this case, Mr. Partee's account of his involvement in that morning's events changed dramatically. He stated that he was down the street when he was summoned back to the house by the other security guard, Tremayne Webster, because the officers had arrived. He met the officers inside the house. The officers informed him that they were looking for the owners. Mr. Partee left the

³⁷ Mr. Sandwisch was interviewed by Detective Kilcoyne at 9701 Yoakum Drive on October 28, 2000. Deputy District Attorney Daniel was present during and participated in the interview.

³⁸ Mr. Partee was interviewed by Detective Kilcoyne at 9701 Yoakum Drive on October 28, 2000. Deputy District Attorney Daniel was present during and participated in the interview.

officers and went upstairs to locate one of the residents of the house. After a few minutes, he found one of the hosts and was in the process of talking to him when he heard the gunshots. Mr. Partee said that he told the investigators that he was the only guard at the party because Mr. Webster told him that he had criminal charges pending against him and he did not want to be involved in the investigation.³⁹

The statement of Tremayne Webster⁴⁰

Mr. Webster stated that he had been asked to assist with security at the party by his friend James Partee. He was supposed to stand by the gate at the end of the driveway and make sure that the shuttles bringing people to the party arrived in an orderly manner. He was attired in dark pants and a jacket imprinted on the back with the word "SECURITY." According to Mr. Webster, Mr. Partee was back and forth from the driveway to the bottom of the hill checking on parked cars.

When the officers arrived,⁴¹ they approached and asked him where they could find the "owner of the house." Mr. Webster indicated that he shrugged, pointed up the driveway toward the house and said, "He was around somewhere." The officers then walked up the driveway toward the house. Mr. Webster said that he did not accompany the officers and never entered the house. When Mr. Partee came back to his location a few minutes later, Mr. Webster told him the police were inside. Mr. Partee then entered the house as well.

While still standing at the gate, Mr. Webster heard "one or two pops" but thought they were balloons. He did not see the shooting and was not aware that what he heard were gunshots. He was told of the shooting by guests who were leaving the party. Mr. Webster said that more police cars and fire units arrived about eight minutes after he was told of the shooting.

Other civilian witnesses

In addition to the foregoing witnesses, the L.A.P.D. interviewed forty-four other civilian witnesses. With the exception of those already discussed, none of these persons were in a position to have seen the shooting. Most heard what they believed to be gunshots or firecrackers but were in the process of leaving the party at the time. A few of the witnesses were in the hallway or in rooms adjacent to the northwest bedroom. Several of those witnesses looked into the room after the shooting and saw Mr. Lee's body on the

³⁹ On March 23, 2000, the District Attorney's Santa Monica Branch Office filed a one count felony complaint against Mr. Webster, in case number SA038612, alleging a violation of Penal Code § 487(a), Grand Theft. On May 1, 2000, Mr. Webster pled no contest to that charge. The case is currently pending sentencing on March 22, 2002. Sentencing in this matter has been delayed while Mr. Webster is paying restitution to the victim.

⁴⁰ Mr. Webster was interviewed by Detectives Kilcoyne and Coulter at the intersection of Crenshaw Boulevard and Stocker Avenue on January 4, 2001.

⁴¹ Mr. Webster described one male and one female officer.

floor. The scene and circumstances of the shooting that they described did not differ, in any material aspect, from the statements of the witnesses recounted above. Therefore, we will not separately detail the content of their statements.

The paramedics response

Los Angeles City Fire Department Engine Company 99 and Rescue Ambulance 899 arrived at the scene at approximately 12:55 p.m. The paramedics found Mr. Lee laying at the foot of the bed in the northwest bedroom.⁴² He was not breathing and had no discernible vital signs. Paramedics McNeil and Findley immediately began administering emergency medical treatment. Mr. Lee failed to respond to the treatment and was pronounced dead at the scene by Paramedic McNeil at 1:04 a.m. The paramedics also treated Mr. Frey for minor lacerations to his right ear and face which were most likely caused by flying glass.

The scene in the northwest bedroom

The northwest bedroom is located on the lowest story of this multi-level home. The room could be accessed through an interior door, which leads to the main hallway, and the aforementioned exterior glass doors leading to the outside walkway and lap pool. The room has a private bathroom in the southwest corner. A walk-in closet and smaller linen closet are accessible through doors on the west wall. In the center of the room was a bed, abutting the south wall, which faced north toward the glass doors. A hi-fi console sat against the west wall. A desk sat against the north wall and a chair and small table sat in the northwest corner of the room.

The investigators found Mr. Lee's body laying on the floor at the foot of the bed. His head was facing east and his feet to the west. His right leg was elevated and resting on the cushion of the chair in the northwest corner. At the time, Mr. Lee was laying face up, slightly on his right side and facing north.⁴³ His left arm was laying against his left side. The gun that Mr. Lee had drawn was laying on the floor adjacent to his right knee, a few inches from his right hand. The body was approximately three feet from the glass doors.

The doors contained ten glass panes each measuring approximately 12" x 12". Three of the top four panes were shattered. There were six bullet entry holes ("impacts") through the three panes. Three of the holes appear to have been from the entry of a single bullet. The other three, larger and more irregular in shape, appear to have been made by multiple entries.⁴⁴ Fragments of shattered glass lay on the floor inside the bedroom.

⁴² To this point, Mr. Lee's body had only been moved once. Mr. Denton admitted that he had tried to roll Mr. Lee, who was laying on his stomach, onto his back still believing that the whole incident was a hoax.

⁴³ At this point in the investigation, Mr. Lee's body had been handled by both Mr. Denton and the paramedics. It is difficult to determine exactly how much movement had occurred. However, from the statements of the witnesses, it appears that there had been no substantial movement of the body.

⁴⁴ See Addendum #4 for a photograph of the impacts through the glass door.

In addition to the six bullet impacts discussed above, the investigators found eleven other impacts inside the room. These impacts formed a basic inverted crescent pattern on the west wall and closet doors of the bedroom with the low points at the north and south ends.⁴⁵ Several of the bullets had passed through the wall and closet doors. At least two of the impact marks were caused by bullets that had split in two from a previous impact. Analysis of the impact marks and the "paths" made by the bullets show a pattern of fire consistent with the witness accounts of Officer Hopper's movement while firing his gun.⁴⁶

Criminalists from the L.A.P.D.'s Scientific Investigations Division, Firearms Section recovered nine expended .45 caliber shell casings from the exterior walkway and surrounding area. They also recovered six fired bullets from the interior of the bedroom. Five of the bullets were lodged in the west wall and the interior walls of the closets. The sixth bullet was laying on the floor approximately eighteen inches east of Mr. Lee's head.

The investigators also recovered the gun that Mr. Lee was holding when he was shot. They determined that it was an exact replica firearm made of a black lightweight "rubber-like" material. The gun was recovered from between Mr. Lee's right hand and his right knee. A detailed description of, and the origin of, this replica firearm will be discussed later in this report.

The Coroner's investigation at the shooting scene

Los Angeles County Coroner's Investigator Lisa Branson arrived at the shooting scene at 9:10 a.m. on October 29, 2000. She found that Mr. Lee was attired in a black hooded sweatshirt, a black vest, a dark blue T-shirt and Khaki trousers with a black belt. He also wore blue plaid boxer shorts, blue socks and a pair of black laced boots. On the top of his head, slightly askew, was a red devil mask with an attached black hood. The horns were broken away from the mask and laying on the floor near the body.

During the course of her investigation, Ms. Branson found a seventh bullet underneath Mr. Lee's black T-shirt. She found two "gel capsules" containing a brown granular substance in the pocket of his T-shirt. Underneath the bandanna that Mr. Lee had wrapped around his left hand, she found pieces of a "green" pill. Ms. Branson also took adhesive lifts from both of Mr. Lee's hands with a Gunshot Residue kit (GSR) so that it could later be determined if any gunshot residue was present. The "gel" capsules, the pieces of the "green" pill, the bandanna and the bullet were released to the L.A.P.D. at the scene. Mr. Lee's clothing was released to the L.A.P.D. after the Coroner's autopsy.

⁴⁵ See Addendum #5 for a photograph of the impacts in the wall of the northwest bedroom.

⁴⁶ While damage prevented the determination of the direction of the paths of several of the bullets, those whose paths could be determined ran either north to south (consistent with Officer Hopper firing from a standing position at the glass door) or southwest (consistent with Officer Hopper backing away to the east as he continued to fire).

The testing of the recovered evidence

On November 2, 2000, L.A.P.D. Criminalist Buffy Miller performed an examination of and analysis on the two brown "gel capsules" found in Mr. Lee's shirt pocket, and the fragments of the "green" pill found in his left palm under the bandanna. Ms. Miller determined that the brown substance within the "gel" pills was not a narcotic or a controlled substance. Ms. Miller determined that the broken fragments of the "green" pill were methylenedioxy-methamphetamine (MDMA), a controlled substance, commonly known as "Ecstasy."

On November 7, 2000, Criminalist Robert Monson visually examined and performed a screening test for blood on the six bullets recovered from the bedroom. The tests results were negative for the presence of blood. On November 16, 2000 Firearms Examiner Starr Sachs conducted a test fire comparison of the shell casings and bullets recovered from the shooting scene with a test bullet that she fired from Officer Hopper's gun.⁴⁷ She determined that all of the casings and bullets had been fired from Officer Hopper's weapon.

On December 9, 2000, L.A.P.D. Criminalist Diana Paul conducted an examination of Mr. Lee's clothing that he wore at the time of the shooting. During the examination, she found a box labeled "Sherman Cigarettes" and a plastic jar marked "Blistex" in the right front pocket of the black vest. Inside the box were sixteen "Sherman Cigarettes" and one hand rolled cigarette. On December 14, 2000, Criminalist Miller examined and analyzed the contents of the cigarette box. She found that the sixteen "Sherman Cigarettes" did not contain a narcotic or a controlled substance. She also determined that the hand rolled cigarette contained marijuana.

Mr. Lee's replica .357 Magnum handgun

The gun that Mr. Lee brought to the party that night was an exact replica of a blue steel Desert Eagle .357 Magnum semi-automatic pistol manufactured by Israel Military Industries (IMI).⁴⁸ The replica gun bore the serial number I-1812. It was made of a black lightweight "rubber-like" material. It had no orange tip and did not bear any other safety markings.⁴⁹

⁴⁷ Ms. Sachs used ammunition identical to that which Officer Hopper had loaded in his gun on the night of the shooting.

⁴⁸ See Addendum #6 for photographs of the replica .357 Magnum and a side-by-side comparison with an actual Desert Eagle .357 Magnum.

⁴⁹ One of the witnesses interviewed during this investigation, Mr. Denton, indicated that he believed that the gun had an orange tip. Upon personal inspection of the replica firearm, however, this office is convinced that was not the case.

On November 1, 2000, L.A.P.D. Detective Robert Bub contacted the United States Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, National Tracing Center, and requested a trace on the history of the IMI Desert Eagle, serial Number I-1812. The trace revealed that the gun was imported by Magnum Research Incorporated of Minneapolis, Minnesota on October 9, 1987. The gun was shipped to RSR Group Nevada Incorporated of Reno, Nevada.

On November 11, 2000, Detective Coulter spoke to an employee of the RSR Group by telephone. He was told that the IMI Desert Eagle was shipped by their office to La France Specialties of San Diego, California on October 26, 1987. On November 12, 2000, Detective Coulter spoke with Timothy La France, the owner of La France Specialties. Mr. La France checked his records and found that the gun had been shipped to his business at the request of a Los Angeles company by the name of Ellis Props and Guns. Mr. La France told Detective Coulter that his business specializes in the conversion of "live fire" weapons to "gaseous blank fire" for use by prop companies and movie studios. His records indicated that he converted that IMI Desert Eagle to "gaseous blank fire", placed a "plug" in the barrel, and shipped it to Ellis Props and Guns in late 1987.

Mr. La France stated that it was common for Ellis Props and Guns, and other prop companies, to make rubber molds using the actual firearms. Additional replica pistols, generally three or four, were made from the molds. These exact replicas were then used in filming to avoid damage to the real firearm. These are exact replicas, in size, shape and color, and are indistinguishable from the actual gun.⁵⁰ Mr. La France told Detective Coulter that he believed that Ellis Props and Guns had recently ceased business and had sold their supply of prop weapons.⁵¹ Detective Coulter was unable to reach Ellis Props and Guns, or anyone previously connected to that business.⁵²

The autopsy and forensic toxicology

On October 29, 2000, Deputy Medical Examiner Jeffrey P. Gutstadt, MD, of the County of Los Angeles Department of Coroner, performed an autopsy on Mr. Lee's body.⁵³ Dr. Gutstadt ascribed Mr. Lee's death to "multiple gunshot wounds." In all, Dr. Gutstadt found four gunshot wounds; two of the wounds were fatal in nature. A brief discussion of

⁵⁰ Criminalist Sachs examined the replica handgun on November 22, 2000. After her examination, she opined that it was an exact molded replica of an IMI Desert Eagle which bore all the markings that would be present on any Desert Eagle .357 Magnum on the market today.

⁵¹ Mr. Lee was an actor who had made several appearances in both the movies and television. This contact with the entertainment industry may explain how he was able to procure a replica firearm from a "prop" company. However, it is not known exactly how Mr. Lee came into possession of the replica gun.

⁵² Detective Coulter attempted to contact Ellis Props and Guns at the number supplied to him by Mr. La France. After dialing the number, he received a recording informing him that the number had been disconnected. There were no telephone listings for that business.

⁵³ L.A.P.D. Detectives Rodriguez and Forsman and District Attorney Senior Investigator Maldonado were present during the autopsy.

each of the wounds, their entries, exits and paths follows. It should be noted that the numbering of the wounds is for identification purposes only and does not define the order in which the wounds were received.

The entry of gunshot wound #1 was in the back of the head, three inches below the vertex and one-half inch right of the posterior midline.⁵⁴ The irregularly shaped wound had no soot, powder or stippling.⁵⁵ The direction of the bullet was forward, downward and left to right. The "path" of the bullet was through the scalp, the right occipital and temporal bones to below the right ear.⁵⁶ Dr. Gutstadt recovered the bullet below the right ear near the angle of the jaw. Dr. Gutstadt determined that this was a "indeterminate/distant range, penetrating, non-fatal gunshot wound."

Dr. Gutstadt labeled a wound to the left upper back as gunshot wound #2. The entry of this wound was in the left back, fifteen inches below the vertex and six inches left of the posterior midline. This wound was also irregularly shaped with no soot, powder or stippling. This bullet exited Mr. Lee's body through the posterior left shoulder, ten inches below the vertex and ten inches to the left of the posterior midline.⁵⁷ The path of this bullet was through the superficial tissues of the left back in a direction right to left, slightly forward, and upward. Dr. Gutstadt described wound #2 as an "indeterminate/distant range, perforating, non-fatal gunshot wound."

Wound #3 was a gunshot wound to the right mid/upper back. The entry was seventeen inches below the vertex and one-half inch right of the posterior midline. The exit wound was located in the left clavicular area/upper chest, eleven inches below the vertex and five inches to the left of the anterior midline.⁵⁸ The path of the bullet was through the skin of the back, perforating the scapula, crossing the midline.⁵⁹ It entered the left pleural cavity, perforated the left upper lobe of the left lung and exited the anterior chest wall.⁶⁰ The direction of this bullet was right to left, forward and upward. The angle of the upward path of this bullet was at a greater degree than that of the bullet that caused wound #2. This wound was determined to be an "indeterminate/distant range, perforating, fatal gunshot wound."

Gunshot wound #4 was to the right back/flank area. The bullet entered twenty-three inches below the vertex and four and one-half inches right of the posterior midline. There was no exit wound and the bullet was recovered from the left chest twenty inches below

⁵⁴ The vertex is the top, or crown, of the head. The midline is the imaginary line separating the right and left sides of the body. Posterior means the rear of the body. Anterior means the front of the body.

⁵⁵ Soot, powder or stippling would be present in a close contact wound.

⁵⁶ The occipital and temporal bones comprise the human skull.

⁵⁷ Because this was a through and through wound, no corresponding bullet was recovered.

⁵⁸ The clavicle is also known as the collar bone. It ends with the shoulder on one end and the sternum, or breast bone on the other.

⁵⁹ The scapula is the large flat bone the forms the rear of the shoulder.

⁶⁰ The pleura are the membranes covering the lungs. The pleural cavity is the potential space between the outer and inner lung membranes.

the vertex and two inches left of the anterior midline.⁶¹ The path of this bullet was through the skin of the right back/flank, through the right kidney, through the right adrenal gland, through the liver, and perforating the abdominal aorta and esophagus, through the diaphragm, through the right ventricular wall of the heart, through the pericardium and into the left anterior chest wall.⁶² The direction of this bullet was right to left, forward and upward. The angle of the upward path of bullet #4 was at a greater degree than that of bullets that caused wounds #2 and #3. This wound was determined to be an "indeterminate/distant range, penetrating, fatal gunshot wound."

A significant amount of blood was present in the left and right pleural cavities, in the pericardial space and the peritoneum. Mr. Lee's left lung was collapsed and his right lung was expanded and congested. Dr. Gutstadt described the mechanism of the death as "exsanguination into the various body cavities including the pleural cavities, pericardial space and peritoneal cavities." Generally, the damage to the various internal organs caused Mr. Lee to bleed to death internally. The damage to the heart and pericardium indicate that this happened rather quickly.

During the autopsy, Dr. Gutstadt collected samples of heart and femoral blood, urine and a portion of Mr. Lee's stomach contents. On November 29, 2000, the Coroner's Forensic Laboratory performed testing on the blood, urine and stomach content samples. Mr. Lee's heart blood contained an ethanol alcohol content of 0.18 gram percent (g%) and a cocaine content of 0.13 micrograms per milliliter (ug/ml). Mr. Lee's stomach contents contained a ethanol alcohol level of 3.96 grams (g), a benzoylecgonine⁶³ level of 0.02 milligrams (mg) and a cocaine level of 1.6 milligrams. Mr. Lee's femoral blood contained an ethanol alcohol level of 0.03 gram percent (g%) and none of these substances were present in the urine sample. The absence of these substances in the urine, and relative low quantities in the femoral blood, indicate that Mr. Lee had consumed them within a relatively short time before his death.

On November 7, 2000, Coroner's Research Criminalist Steve Dowell examined the GSR tape lifts taken from Mr. Lee's hands. With the use of a Scanning Electron Microscope, he determined that there were "many highly specific particles of gunshot residue on both the right and left hand adhesive lift samples. This would indicate that Mr. Lee had either recently fired a gun or that he otherwise had his hands in an atmosphere of gunshot residue. This could have been discharge from Officer Hopper's weapon, or it could have been residue from the "replica" firearm. There was no gunshot residue detected on any of Mr. Lee's clothing.

⁶¹ The projectiles recovered from wounds #2 and #4 were given to the L.A.P.D. and placed into evidence.

⁶² The adrenal glands, located above each kidney, secrete hormones that help regulate bodily functions. The abdominal aorta is the largest artery below the diaphragm that supplies blood to the abdomen, pelvic organs and lower extremities. The diaphragm is a thin muscle below the heart and lungs which separates the chest from the abdomen. The esophagus is the part of the alimentary canal, or digestive tract, between the pharynx, the cavity at the back of the mouth, and the stomach. The pericardium is the double membrane which surrounds and protects the heart. The pericardial space is the potential space between the two membranes.

⁶³ Benzoylecgonine is a substance created by the process of the body's conversion of cocaine.

The report of Biodynamics Engineering, Inc.

The L.A.P.D. commissioned Biodynamics Engineering, Inc. (Biodynamics) of Pacific Palisades, California to conduct ballistics and bullet pathology testing to help understand the dynamics of the October 28, 2000 shooting. Accompanied by the L.A.P.D. on May 22, 2001, Biodynamics visited the site of the shooting in an attempt to recreate the scenario.⁶⁴ They had been provided with statements of the witnesses to the shooting, a copy of the autopsy report and related diagrams.

The glass doors, which had been taken from the house by the L.A.P.D. and stored as evidence, were replaced in their frames. Using photographs taken the day of the shooting, they were able to locate all of the original bullet holes. They placed a "volunteer surrogate", who was approximately the same height and weight as Mr. Lee, in the positions that Officer Hopper and the other witnesses described him as having occupied. Biodynamics also conducted a series of live fire exercises at the L.A.P.D.'s shooting range. In the live fire exercises, Officer Hopper and two volunteer marksmen were asked to unholster their weapons and fire nine rounds from .45 caliber semiautomatic handguns as rapidly as possible in response to a random strobe light stimulus. Of the four tests that Officer Hopper completed, he was able to fire nine rounds as fast as 1.826 seconds and as slowly as 2.293 seconds.⁶⁵

Employing sophisticated computer measurement and animation software, they were able to provide a possible explanation for the fatal injuries sustained by Mr. Lee. Biodynamics' test results, the witnesses descriptions of where each individual was standing and the angles at which the bullets entered both the wall and Mr. Lee's body were taken into account in reaching this opinion. This office has reviewed the Biodynamics report and the evidence upon which it is based and is of the opinion that their findings are factually sound.

Four of the nine rounds fired by Officer Hopper struck Mr. Lee. The other five struck the west wall and closet doors. While it is impossible to determine when in the sequence of the nine shots Mr. Lee was hit, based on the angles, a reasonable conclusion is that all five of the missed shots were fired before Mr. Lee was struck. Mr. Lee drew his firearm as he turned to his left to confront the person shining the flashlight through the glass doors. It appears that, as Officer Hopper fired, Mr. Lee continued to turn quickly to his left while bending forward at the waist or "ducking down."⁶⁶ Based on the angles of the bullet paths

⁶⁴ The investigating officers and Officer Hopper were present.

⁶⁵ During one of the four tests, Officer Hopper only fired eight rounds. On another of the tests, he fired nine rounds but only eight were recorded on the high speed video. Neither of these two "incomplete" tests were factored into the conclusion.

⁶⁶ Mr. Lee may have turned away from the window in response to something he saw outside, or his reaction may have been caused by the shattering of the glass as Officer Hopper began firing.

through Mr. Lee's body, it is likely that the wounds were received in the following order: four, three, two then one. Wounds four, three and two entered Mr. Lee's back as he continued to turn quickly to his left, first "ducking" and then rising.⁶⁷ Wound one was received as Mr. Lee was falling backward to eventually land at the foot of the bed.⁶⁸

THE STUDIES OF WILLIAM LEWINSKI, Ph.D.

William Lewinski, Ph.D. is a published authority in the field of officer-involved shootings. Dr. Lewinski is a professor in the Law Enforcement Studies Department of Minnesota State University, Mankato.⁶⁹ He has conducted several comprehensive studies involving the dynamics of suspect movement in officer-involved shootings. The results and analysis of one such study was published, in the November/December 2000 issue of *The Police Marksman*, under the title of "Why is the suspect shot in the back?"

In that study, Dr. Lewinski enlisted twenty-five student subjects to perform movements commonly involved in eleven different shooting scenarios.⁷⁰ Using slow motion digital photography, in conjunction with a digital timer accurate to 1/1000th of a second, Dr. Lewinski timed the speeds at which the test subject was able to perform the motions from start to finish. The subjects were instructed to begin their movements on their own initiative, not as a reaction to any stimulus, to better simulate the "action" to which an officer would be "reacting." The results were then compared to the results of earlier studies involving the speed at which police officers are able to recognize a threat and respond by firing at an assailant. The results revealed that, under each of the scenarios, the officer's "reaction" would lag behind the "action" of his assailant.

One of the "movements" that Dr. Lewinski studied is particularly applicable to the facts involved in the shooting of Mr. Lee. In that movement termed "180 degree turn / weapon discharge / square back", the test subject began from a position facing the officer.⁷¹ The subject held the gun in a concealed position at their thigh. On their own initiative, each subject raised, pointed and discharged the weapon at the officer. The subject then turned 180 degrees to the point where their back was square to the officer as if attempting to flee. Dr. Lewinski reported that the average time that it took the subjects to complete this action was 89/100ths of a second with the fastest time recorded at 50/100ths of a second. In contrast, studies have revealed that the time that it takes an average police officer to perceive a lethal threat, draw his firearm, take aim at a subject and fire is between 2.5 and 3 seconds.

⁶⁷ This would account for the gradually diminished upward angle present in these wounds.

⁶⁸ This explains the head wound's front to back and downward angle.

⁶⁹ Dr. Lewinski holds a doctorate in Police Psychology from Union Institute in Cincinnati, Ohio.

⁷⁰ Dr. Lewinski reported that all of the motions used in his study came directly from actual officer-involved shootings.

⁷¹ Of the movements that Dr. Lewinski studied, this scenario most closely matched the facts involved in the shooting of Mr. Lee. It differed only in as much as Mr. Lee was moving at the time he drew the replica gun and that the gun was drawn from his waistband.

In March of 2002, this office interviewed Dr. Lewinski by telephone. He was presented with the facts of this case, including Mr. Lee's motions prior to and during the shooting. He agreed with our analysis of how and in what order Mr. Lee suffered his wounds. He opined that, based upon the wound pathology described to him and the motions of the relative parties, the facts were consistent with the wounds being suffered in the order of wound #4 to wound #1. Dr. Lewinski found that to be consistent with Mr. Lee continuing, after pointing the replica gun in Officer Hopper's direction, to power from his strong right side to his left and completing his 180 degree turn to a point where his back was facing Officer Hopper. Dr. Lewinski emphasized that this full motion can be accomplished well before an officer can complete the firing of nine rounds from his gun.

While explaining the dynamics of suspect movement, and consequently the circumstances that would cause an individual to be shot in the back, Dr. Lewinski stressed that many psychological factors operate on an officer's mind under the circumstances presented in an armed confrontation. Dr. Lewinski indicated that once an officer recognizes that his life is under immediate threat and he makes the decision to fire in defense there is little that will stop that process. In this self-preservation mode, an officer's entire focus is devoted to the drawing, aiming and firing of his weapon. The officer is likely to perceive nothing other than the sights of his gun and the acquisition of his target.⁷²

In his study, Dr. Lewinski found that, "By studying the "dynamic" rotation, while the subjects were performing a 90, 180 or 360 degree turn, not only can we see that the subjects would be shot in the back if they were actually in a street encounter, and the officer was to really "react," but also, the subjects would be shot at quite a distance from where the officer said they were when the officer made the decision to fire." Although the position of the subject threatening the officer's life may have altered, the officer's perception of that threat would not have changed from that present at the time he made that decision to fire. The survival instinct will have narrowed the officer's ability to perceive anything other than what was necessary to save his life.⁷³

LEGAL ANALYSIS

California law permits the use of deadly force in self-defense or in the defense of another if it reasonably appears that the person claiming the right of self-defense or the defense of another actually and reasonably believed that he was in imminent danger of great bodily injury or death. People v. Williams, (1977) 75 Cal.App.3d 731.

⁷² Dr. Lewinski explained that studies have shown that the lag in an officer's ability to perceive a change in the event scenario may be further exacerbated by low light conditions such as those present in the bedroom on the morning of the shooting of Mr. Lee.

⁷³ Dr. Lewinski compared this phenomenon to a commonplace occurrence in professional sports. Nearly all of us have seen professional football players tackled without any awareness of their pursuer or baseball outfielders colliding in an otherwise wide open outfield without any recognition that the other player was present. This occurs because the players' entire focus is on the ball that they are attempting to catch. Their perception is narrowed to the point that they are unable to recognize changes taking place in the environment around them.

If one is confronted by the appearance of danger which arouses in his mind, as a reasonable person, an honest conviction and fear that he is about to suffer bodily injury, and if a reasonable person in a like situation seeing and knowing the same facts, would be justified in believing himself in like danger, and if the person so confronted acts in fear and honest conviction, his right of self-defense is the same whether such danger is real or apparent. People v. Jackson, (1965) 233 Cal.App.2d 639.

In protecting himself or another, a person may use all force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. California Jury Instructions Criminal (CALJIC) 5.30, 5.32.

The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.... The calculus of reasonableness must embody allowance for the fact that police are often forced to make split-second judgments -- in circumstances that are tense, uncertain, and rapidly evolving -- about the amount of force that is necessary in a particular situation. Graham v. Conner, (1989) 490 U.S. 386, 396-397.

Where the peril is swift and imminent and the necessity for action is immediate, the law does not weigh into nice scales the conduct of the assailed and say that he shall not be justified in killing because he might have resorted to other means to secure his safety. People v. Collins, (1961) 189 Cal.App.2d 575.

CONCLUSION

The events that unfolded on the morning of October 28, 2000 had tragic consequences for all who were involved. We do not assume, nor do we allege, that Mr. Lee knew of the peril that he was placing himself in when he turned and pulled the replica gun from his waistband. Nor do we believe that Officer Hopper responded to the disturbance call at that party intending, or even believing, that he would find himself in the position of having to take a human life out of the appearance of personal and public necessity.

When they arrived at the Yoakum Drive address, Officer Hopper and his partner found themselves cut off from communications with their department and woefully outnumbered by the number of partygoers in attendance. By all accounts, the crowd was large and the party loud and chaotic. Despite extensive efforts, Officer Hopper could find no one interested in, or willing to, assist him in locating those responsible for the gathering. His search eventually brought him to the glass doors of the northwest bedroom. His senses could only have been heightened when, upon looking through the doors into the darkened bedroom, he witnessed what he believed to be a drug sale taking place.

When Mr. Lee turned, drew the replica gun from his waistband, pointed it at and advanced on the glass doors, Officer Hopper was faced with a situation that posed, on its face, a grave danger to his safety and the safety of his partner and the civilians nearby. Whatever

Mr. Lee's thinking was at the time, his presence within feet of Officer Hopper required a very quick response. Without the benefit of hindsight, Officer Hopper was forced to make the split-second decision to draw and fire his weapon.

From their studies, Dr. Lewinski and his colleagues have found, that once that decision to shoot had been made, there would have been little that anyone could have done to terminate the unfolding events. Officer Hopper's focus would have been narrowed by the instinct for self-preservation. Those studies show that he would have been unable to perceive that Mr. Lee had begun to turn away from him at the time he began to fire his gun.

Our conclusion must be based on the subjective factors confronting Officer Hopper when he took those actions and an objective analysis of what a reasonable officer would have done under those same circumstances. At the time of the shooting, Officer Hopper found himself in a narrow and poorly lighted walkway that provided no easy means of escape or evasion. He and his partner had chosen to enter into a situation where they were outnumbered by the crowd in attendance at the party from whom they had received no cooperation. Upon looking through the glass door, Officer Hopper was faced with what he perceived to be criminal activity taking place. The events that were unfolding appear to have been the very "tense, uncertain, and rapidly evolving" circumstances that the United States Supreme Court had in mind while authoring their decision in Graham v. Conner.

Suddenly, and with no indication of his true intent, Mr. Lee turned around to face Officer Hopper while at the same time brandishing what anyone, especially a law enforcement officer, would have perceived to be a handgun. Mr. Schuberg indicated that the replica gun looked absolutely real and Mr. Lee's actions in pointing the gun while approaching the glass doors were clearly threatening. One cannot doubt that, with their additional training and experience, any police officer faced with those same circumstances would have perceived that immediate threat and reacted in the same manner as Officer Hopper. Officer Hopper's response, under those circumstances, was justified.

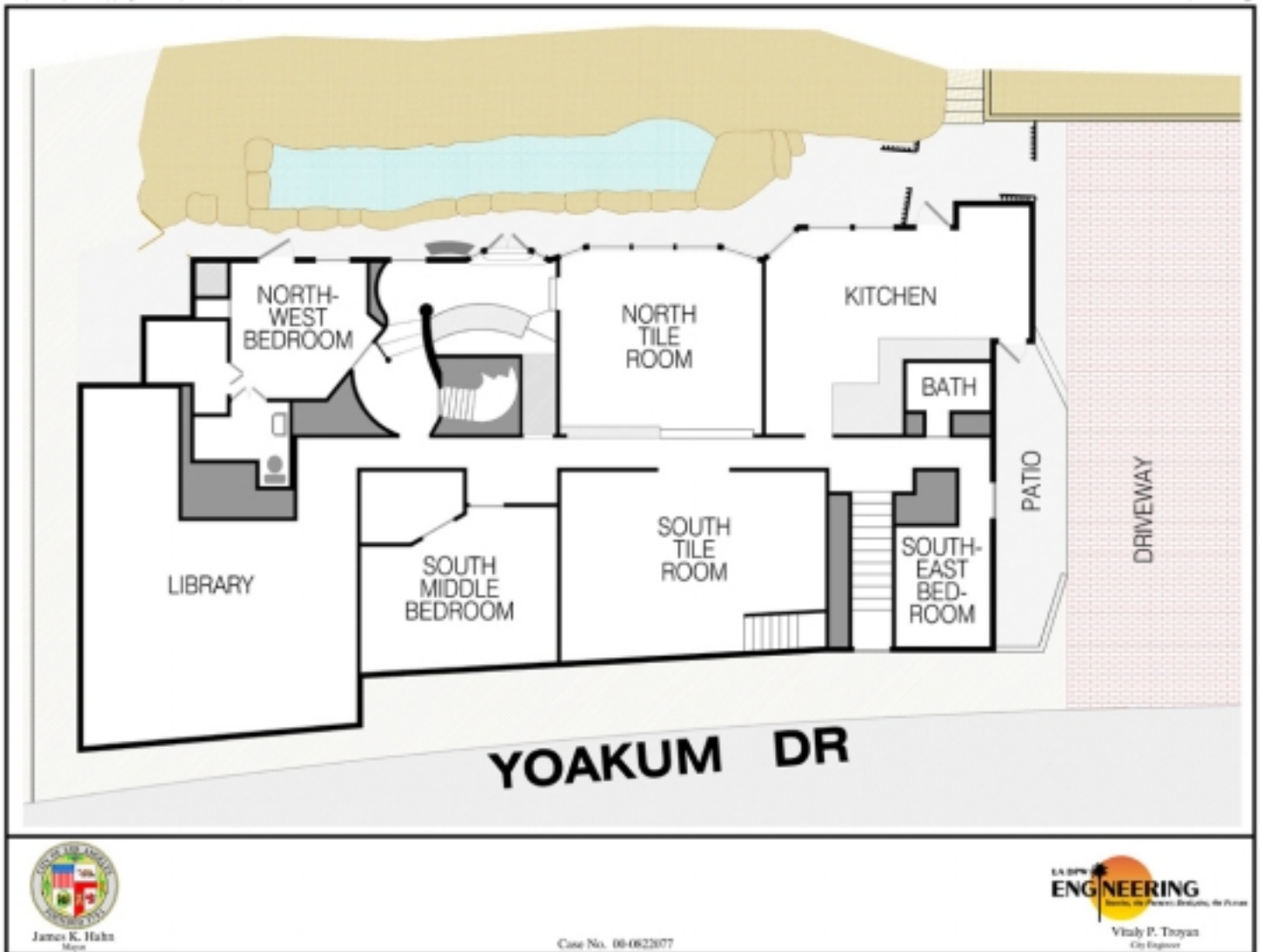
It is the conclusion of this office that Officer Hopper acted in lawful self-defense and lawful defense of others when he shot Anthony Dwayne Lee. We are, therefore, closing our file and will take no further action on this matter.

Respectfully submitted,

STEVE COOLEY
District Attorney

By

MICHAEL KENNETH PETTERSEN
Deputy District Attorney



Note: This map is a graphic representation of the location. Variations in any dimensions or distances are due to the tolerance of the instruments used. Not all land features are shown.

ADDENDUM #1

"Floor plan" diagram of the residence

9701 Yoakum Drive



ADDENDUM #2

Photographs of the northwest
walkway

LEGEND

Officer - Involved Shooting
October 28, 2000 @ 0043 hours
9701 Yoakum Drive
DR #00-08-22077
OIS #068/00



Indicates the approximate location of Officer Hopper when he fired nine rounds in rapid succession in a southwesterly direction at Lee, while re-deploying rearward, from a distance of approximately 6 feet.



Indicates the approximate location of Officer Humpherys at the time of the officer-involved shooting.



Indicates the approximate location of Lee when he pointed his replica firearm at Officer Harper and the officer-involved shooting occurred.



Indicates the approximate location of Witness Schuberg at the time of the officer-involved shooting.



Indicates the approximate location of Witness Frey at the time of the officer-involved shooting.



Indicates the approximate location of Witness Denton at the time of the officer-involved shooting.



Indicates the approximate location of Witness Sandwisch at the time of the officer-involved shooting.



James E. Hubbs
Mayor

Detail of Northwest Bedroom

Case No. 08-0023077



ADDENDUM #3

Diagram of the northwest
 bedroom



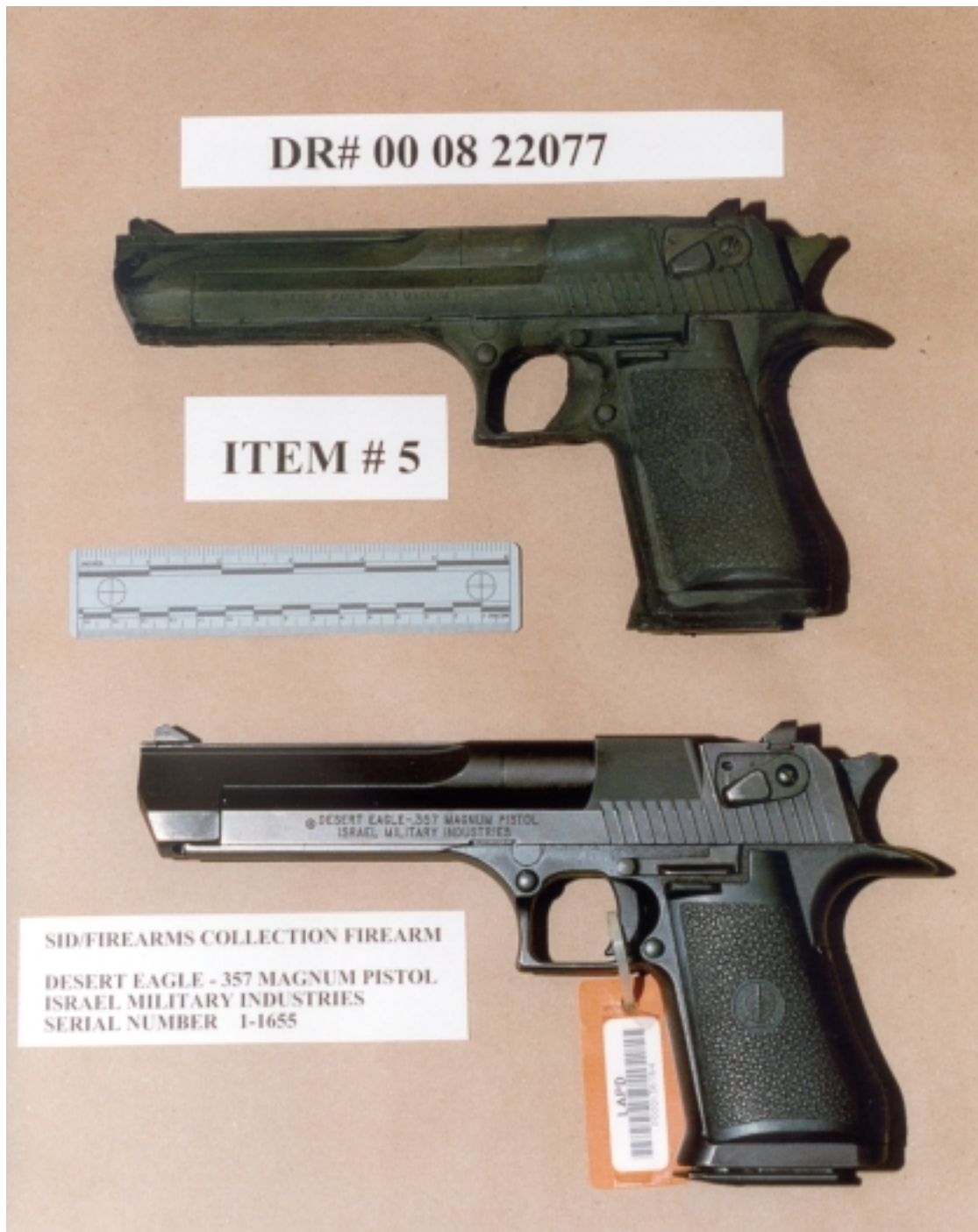
ADDENDUM #4

Photograph of the "impact" marks
in the glass door



ADDENDUM #5

Photograph of the "impact" marks
in the wall of the northwest bedroom



ADDENDUM #6

A photograph of Mr. Lee's replica .357 Magnum
and a comparison with an actual Desert Eagle .357Magnum